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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/599,987      | 06/23/2000  | Richard E. Fulton    | 3663-5              | 9195             |

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SHERIDAN ROSS PC  
1560 BROADWAY  
SUITE 1200  
DENVER, CO 80202

EXAMINER

WEBB, JAMISUE A

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/599,987

Applicant(s)

FULTON, RICHARD E. *CR*

Examiner

Jamisue A. Webb

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 16, 17 and 19-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-14, 16, 17 and 19-55 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The substitute specification filed 11/19/01 has not been entered because it does not conform to 37 CFR 1.125(b) because: it does not include a marked up copy of the original specification.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-14, 16, 17, 19, 50, 51 and 53, drawn to a thrombolytic device with a catheter, motor, a pharmacological delivery conduit and a pump for delivering a pharmacological agent, classified in class 604, subclass 21.
  - II. Claims 20-30, 41 and 42, drawn to pharmomechanical device comprising a means to increase the surface area of a clot, a means for providing a mechanical action to a vessel, and a corkscrew catheter, classified in class 606, subclass 159.
  - III. Claims 31-33, 35, 45-49, 52, 54 and 55, drawn to a method for ameliorating a clot including die, a catheter, occlusion element, programming a motor controlling element, intermittently activating thrombolytic device and observing the patient, classified in class 604, subclass 28.
  - IV. Claims 34, 36, 37, 39, 40, 43 and 44, drawn to a thrombolytic device with a catheter, deformed mesh braid, a disk-like structure to occlude a vessel, and a means for repeatedly rotating catheter, classified in class 606, subclass 151.

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- V. Claim 38, drawn to thrombolytic device containing a mechanically active segment, an aperture segment and a infusion pump, classified in class 606, subclass 171.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions thrombolytic device and method of ameliorating a clot are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case The method of ameliorating does not require the use of the thrombolytic device, it does not require the use of an infusion pump, a mesh braid, corkscrew catheter, or an aperture segment. Further, in the method, a person can program a motor controller before deploying a distal occlusion element.
4. Inventions I, II, IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions all have different modes of operation. Invention I has a catheter, a motor, a pharmological delivery conduit, and a pump. Invention II is a pharmomechanical device, does not require a motor, or a pump and can mechanical action can be a simple movement such as a percussion of a body part, furthermore this invention requires a corkscrew catheter. Invention IV uses a specific deformed mesh braid and an occlusion disk-like structure, not required in inventions I, II or V. Invention V has segments where the motor is hooked to one segment to

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provide movement, and the infusion pump is hooked to another segment to provide a thrombolytic agent, this invention does not require a catheter, which is in all other inventions.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.


6. A telephone call was not made to request an oral election to the above restriction requirement, due to the complexity of the restriction.


Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
jaw  
March 16, 2002

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700